BEFORE THE DEPARTMENT OF ENVIROMENTAL QUALITY WATER QUALITY DIVISION STATE OF OKLAHOMA

	OKLAHOMA DEPT. OF ENVIRONMENTAL QUALITY
IN THE MATTER OF WATER POLLUTION CONTROL FACILITIES:)) FEB - 7 2000
Oklahoma Tourism and Recreation Department, Respondent,	FILED BY: HEARING CLERK
<u>-</u> ,) Case No. 99-420
Water Quality Division,)
Petitioner.)
Facility No. S-21721	j .
NPDES No. N/A)
Complaint Nos. 300-00-00-07158,)
300-00-00-08591, and 300-00-00-08726	·)

MEMORANDUM OF AGREEMENT

The Oklahoma Department of Environmental Quality ("DEQ") and Oklahoma Tourism and Recreation Department ("OTRD"), (collectively "Parties") desire to resolve issues of compliance involving certain alleged violations, without the necessity for formal administrative or judicial proceedings and hereby agree to this Memorandum of Agreement ("MOA").

Findings of Fact

1. Oklahoma Tourism and Recreation Department, an Oklahoma State Agency, owns and operates a publicly-owned treatment works ("POTW") which serves

the employees and visitors of the Pine Cove Marina area of Tenkiller Lake State Park, Sequoyah County, Oklahoma.

2. The Respondent is alleged to be in violation of the "Oklahoma Administrative Code" ("OAC"), Chapter 640, "Individual and Small Public Sewage Disposal", OAC Chapter 620, "Non-Industrial Impoundments", and OAC Chapter 605, "Discharges- OPDES (NPDES)", as follows:

OAC 252:620-5-31(5) requires that all lagoons and systems designed for a specific purpose be maintained and operated to provide optimum treatment results. The complaints (Complaint Nos. 300-00-00-07158, 300-00-00-08591, and 300-00-00-08726) which initiated these inspections alleged that sewage was flowing from a lift station into the lake and the holding tank in the parking lot was overflowing. The lift station is not fenced and, therefore is not secure. Evidence at the site indicated the lock on the electric box was broken, the box was damaged, and that sewage had been flowing downhill to the lake for some time. Inspection of the Pine Cove Marina area of the park by Phillis Stevens, Water Quality Division (WQD), DEQ, and Robert Bates, R.S., Roland DEQ Office, on July 21, 1999, indicate that lake water levels appear to be sometimes higher than the lift station, septic tanks, and the floors of the bathhouses.

OAC 252:640-1-3(2) requires site suitability for the installation of an onsite sewage disposal system. During a prior inspection by Robert Bates, R.S., on May 6, 1999, the holding tank located in the parking lot adjacent to the lake and containing raw sewage was under water due to high lake levels. The marina was prevented from pumping to the tank by the high water covering the parking lot. This, in turn, caused operational problems for the marina and posed a serious environmental threat from fecal contamination to the lake. During the inspection on July 22, 1999, it was noted that the holding tank does not have sealing lids to prevent lake and parking lot contamination from entering and requires pumping two or three times a week.

Land application from the lagoon system without a permit constitutes a violation of OAC 252:605-1-3 which says in part, "....it shall be unlawful to discharge any pollutant to the waters of the state without first obtaining a permit from the Executive Director of the Department." The POTW operated by OTRD is permitted as a total retention lagoon system. Unpermitted land application of POTW effluent was documented by Phillis Stevens, Water Quality Division, DEQ, and Robert Bates, R.S.,

Roland DEQ Office on July 22, 1999, while inspecting the wastewater lagoon system. Effluent from the lagoons is used to irrigate areas of the park to which the public has access. These areas include camping and picnic areas. Prior to application, a water quality permit must be obtained. Non-industrial wastewater to be applied on multipurpose areas (e.g. golf courses) must be disinfected prior to application. Land application of non-industrial wastewater to areas where there may be skin contact is not permitted at all.

- 3. DEQ sent notice of these alleged violations to the OTRD in a warning letter on August 19, 1999.
- 4. Failure of OTRD to comply with the rules stated in paragraph two (2) may result in harm to the environment or health of the affected public. Failure to meet these "standards" could cause a dissolved oxygen depletion, which could have detrimental effects to fish and other aquatic organisms. Furthermore, the discharge could contain pathogenic bacteria, which may cause the public, who swim or fish in the lake, to be exposed to an unsafe level of bacteria.
- 5. The Parties agree that it is in their mutual interest to resolve these matters expeditiously and without the need for formal proceedings.
 - 6. The Parties waive the filing of a petition as predicate for this MOA.

Conclusions of Law

- 7. DEQ is the regulatory authority that has jurisdiction in Oklahoma over the violations of OAC 252:605 pursuant to 27 A O.S. § 1-3-1-101.
- 8. The alleged facts stated in paragraph two (2) constitute a violation (s) of OAC 252:620-5-31(5), OAC 252:640-1-3(2), and OAC 252-605-3-1 for which an Order may be entered.

Order

Based upon the foregoing, the Parties agree, and it is ordered, as follows:

- 9. OTRD will take all necessary steps to cease unpermitted discharges and construct a sanitary sewer collection and wastewater treatment system in accordance with the OAC:252:605, OAC:252:647, and OAC:252:655.
- 10. OTRD will complete the following tasks by the dates specified below, provided that a legislative appropriate of funds necessary for the identified task is provided for that purpose:

	Task	Date
A.	During periods of high water elevation which result in flooding of the septic tank at the marina, a watertight hose or other watertight connection will be used to pump sewer accumulation to a disposal truck or other non-inundated collection point. In the event that the redirection is not possible, the facilities served by this septic tank will be closed until such time as the water recedes.	As Necessary
	water recedes.	As Necessary
В.	For non-sealed lift stations, which are totally inundated and are a threat to discharge effluent into the lake, the facilities served by the lift station will be closed until such time as the water recedes.	As Necessary
C.	Retain a professional engineer licensed in the state of Oklahoma who is competent in wastewater design and project oversight, provided an appropriation for this purpose is received in the 2000 legislative session.	12/01/2000
D.	Prepare and submit an approvable engineering report documenting the corrective action for the alleged violations cited in paragraphs 2 through 4 above.	02/01/2001

E.	Submit approvable plans and specifications for construction.	07/01/2001
F.	Obtain funding for the construction project	07/01/2001
G.	Bid project and select contractor.	10/01/2001
H.	Start construction.	11/01/2001
I.	Complete construction.	11/01/2002

- 11. Reports shall be prepared and submitted to the DEQ within 14 days of each task date to advise DEQ on compliance with the deadline.
- 12. OTRD shall take reasonable efforts to minimize any delays and will perform the requirements of this MOA within the approved schedule unless performance is prevented or delayed by events, which constitute a force majeure. "Force Majeure," for purposes of this MOA, is defined as any event arising from causes beyond the reasonable control of OTRD or their contractors, subcontractors or laboratories which delays or prevents the performance of any obligation under this MOA, such as, without limitation, acts of God; vandalism; fire; flood; labor disputes or strikes; weather conditions which would prevent or impair construction activities; failure to receive legislative funding; civil disorder or unrest. Force Majeure events do not include increased costs of performance of the tasks agreed to by the Parties, or changed economic circumstances. OTRD shall notify the DEQ in writing within fifteen (15) days after OTRD knew or should have known of a Force Majeure event that will cause a delay or anticipated delay in achieving compliance with any requirement of this MOA.

- 13. This MOA may be amended by mutual consent of the Parties. Such amendments shall be in writing and shall have as their effective date, the date on which they are signed by the DEQ.
- 14. Upon submission to DEQ, any final reports, plans, specifications, schedules, and attachments required are incorporated into this MOA.
- 15. No informal advice, guidance, suggestions or comments by DEQ regarding reports, plans, specifications, schedules, and other writing submitted by OTRD will be construed as relieving or modifying OTRD's obligation to obtain written approval by DEQ, if and when required by this MOA. DEQ agrees to not unreasonably withhold necessary approvals.
- 16. Failure of OTRD to respond within a reasonable time to any error deficiencies or other regulatory requirements identified by DEQ, or to implement the plans according to the approved terms, shall constitute a violation of this MOA.
- 17. The provisions of this MOA shall apply to and are binding upon the Parties, and upon their duly elected officers, directors and agents.
- 18. The requirements of this MOA shall be deemed satisfied and this MOA terminated upon receipt by OTRD of written notice from DEQ that OTRD has demonstrated that all the terms of the approved tasks have been completed to the satisfaction of DEQ. DEQ agrees to not unreasonably withhold the approval notice.

Notice

19. Unless otherwise specified, any report, notice, or other communication required under this MOA shall be in writing and shall be sent to:

For the Department of Environmental Quality:

Phillis Stevens, District Representative Water Quality Division P.O. Box 1677 Oklahoma City, Oklahoma 73101-1677

For the Oklahoma Tourism and Recreation Department:

Kristina S. Marek, Director Division of Planning and Development 15 North Robinson, Suite 100 Oklahoma City, Oklahoma 73102

Retention of Jurisdiction

20. This MOA shall be enforceable as any other Order of the Executive Director of DEQ. The DEQ shall retain jurisdiction of this matter for the purposes of interpreting, implementing and enforcing the terms and conditions of this MOA and for the purpose of adjudicating any matters of dispute among the Parties.

Severability

21. Nothing in this MOA shall be construed to relieve OTRD of its obligation to comply with all applicable federal, state and/or local statutes or regulations. It is the intent of the Parties hereto that the provisions of this MOA shall be severable, and should any provisions be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

Venue

22. The venue of any action commencing in district court for the purposes of interpretation, implementation and enforcement of the terms and conditions of this MOA shall be in Oklahoma County, Oklahoma.

Approved and effective as of the date of later signature below.

FOR THE OKLAHOMA TOURISM AND RECREATION DEPARTMENT

FOR THE DEPARTMENT OF ENVIRONMENTAL QUALITY

JANE JAYROE

Jan 25, 2000

MARK S. COLEMAN
Executive Director

Date: 2.7-00